

# What is a public record?

## State law defines public records as:

Any writing containing information on the conduct of government or performance of any governmental or proprietary function that is:

- Prepared
- Owned
- Used, or
- Kept by a public agency
- Work done on home computer

# What is a “writing?”

## Written documents and more:

- Hard copy papers
- Email
- Letters
- Spreadsheets
- Voice mails
- Internet usage
- Blueprints
- Maps
- Metadata
- Videos or film
- Photos
- Computer hard drives
- Data bases
- Data Storage – CD, mobile storage, servers
- Notes of all types
- Anywhere information is stored in any format

# Recognizing a request

- A request must be for an “identifiable record”
- An “identifiable record” is not a request for information
- Look for key words, such as “copy of” or “list of” that indicate the person wants a document or other government “writing”
- Not sure, seek clarification from requestor and help them identify agency records

# Who can make a request?

Anyone, including businesses, attorneys, the media, or individuals

## They can do so by:

- Mail
- Fax
- E-mail
- Subpoena
- Telephone
- In person
- Sign language

# Tips for when you get a request:

- Get the request in writing if possible
  - An agency cannot *require* a request to be in writing, but it is preferred for clarity and documentation
- Read the request carefully to ensure you know exactly what records are being requested
  - Seek clarification if the request is unclear
- If the request is modified verbally, send a written confirmation to the requester

# Requests cannot be rejected as being overly broad

Example, World War II Memorial request:

*“A copy of all GA records from the inception of the project (1995) to present.”*

However, problems fulfilling the request:

- ▶ GA had difficulty locating some records required to be retained under state records retention schedule.
- ▶ Some employees were slow in providing their records which delayed production to requestor.
- ▶ Some employees did not accurately provide what was requested
  - GA inadvertently over-released non-responsive fiscal records.

# What must be disclosed?

All public records are subject to disclosure

And must be produced

- Unless they fall under a specific exemption
- Exemptions are to be narrowly construed in favor of production

# Exemptions from public disclosure

## Examples of general exemptions:

- Private information
  - Employees' personal information: home address, phone or Social Security numbers
  - Bank or financial account details: Credit or debit card numbers
    - unless expressly required by law
- Proprietary information
  - Trade secrets or valuable research data
- Security information
- Draft documents



# De minimus use of state resources

## Key points

- There is little or no cost to the state.
- Most effective use of time or resources.
- Use is brief and occurs infrequently.
- Does not interfere with the performance of your duties.
- The use does not disrupt or distract from the conduct of state business due to volume or frequency.

# **Be careful with email, Internet use**

## **State Ethics Board ruling, October 2010**

- ▶ \$15,000 penalty
- ▶ Used work computer for personal use
- ▶ 1,300 unauthorized web sites
- ▶ 8,000 non-work-related emails in 5 months

# Responding to a records request:

An agency must respond to the initial request within 5 business days by either:

- Acknowledging receipt of the request and giving a *reasonable* estimate of the time needed to respond;
- Providing the records;
- Denying the request; or
- Seeking clarification of the request

# Tips for responding:

- Provide electronic copies of records when possible
- You do not have to create new documents for a requester
  - However, you may need to run a database report
- For large requests
  - You can provide documents in installments

# Tips to help you and the requestor

- Determine the volume of records covered by the request
- Notify the requestor about the number of records and confirm the request

If the requestor does not want all the records the requestor can:

- Narrow the request (by date, subject, type of document)
- Inspect records first and select only what they want copied

# Document and maintain files

- Document and keep records of all public disclosure requests
  - **Use GA's Public Disclosure Tracking System** to record what was done and when
- Retain copies of:
  - Requests and clarifications,
  - Correspondence with requestors (including documentation of oral conversations), and
  - Records provided
  - Provide records to Trina Regan for archiving

# Help from Communications Office

The Communications Office can assist you in:

- responding to a records request
- seeking legal advice if necessary

## Contact:

- **Steve Valandra** 360 902-7215  
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- **Jim Erskine** 360 902-7206  
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